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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 271

CASSIUS MARSELLUS CLAY, JR., also known as MUHAMMAD ALI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

SECOND MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF CERTIORARI, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF

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Petitioner moves the court to allow him to amend his petition for writ of certiorari by adding and including the following therein; or, in the alternative, for leave to file the following as a supplemental brief

to his pending petition for writ of certiorari pursuant to Rule 24(5) of the *Rules of the Supreme Court of the United States,* in order to call attention to a new case decided since the filing of the last pleading herein:

The questions presented in the original petition read in part:

> 1. . . . [W]hether the Court of Appeals erred in:
>
> . . .
>
> d. Failing to find that petitioner had proved specific acts of racial prejudice directed against him
>
> . . . .
>
> 2. Whether petitioner was denied constitutional due process and fairness and justice required in selective service proceedings by statute and regulations in that:
>
> . . .
>
> b. his selective service file contained "no basis in fact" for the denial to him of a ministerial exemption;
>
> c. he was wrongfully denied conscientious objector status due to: mistaken advice from the Department of Justice to the Appeal Board for the Western District of Kentucky (the "Kentucky Appeal Board"); the failure of the Texas Appeal Board to refer his case for advice to the Department of Justice; and the denial to him and the Kentucky Appeal Board of copies of the Hearing Officer's report to the Department of Justice. Petition for Certiorari at 2-3.

Fairly comprised within the foregoing is the question presented in the recently decided case of *Presbyterian*

Church in the United States v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 37 U.S.L.W. 4107 (U.S. No. 71, Jan. 27, 1969) which may be paraphrased as follows:

> The question presented is whether the restraints of the first amendment permit the United States Department of Justice to determine a selective service registrant's rights on the basis of the interpretation and significance the Department assigns to aspects of church doctrine.[1]

In the alternative petitioner prays that the foregoing be considered as an additional question under Rule 24(5).

As pointed out in the Petition for Certiorari at 16-17 and in Petitioner's Reply to Supplemental Memorandum for the United States at 5, the Department of Justice advised the Selective Service System that "the teachings of the Nation of Islam rest on grounds which primarily are political and racial." Petitioner's Selective Service File 220 (Govt. Exh. 1). Petitioner was thereupon denied classification as a minister or conscientious objector. In deciding the conscientious objection issue the court of appeals apparently relied in part on this finding (Appendix to Petition for Writ of Certiorari, 37a) and approved "a penetrating analy-

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[1] The *Presbyterian Church* case stated the question:

> The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine. 37 U.S.L.W. at 4107.

sis of the beliefs of the Black Muslims . . . ." (*Id.* at 37a n. 16; see also *id.* at 38a-40a nn. 17-18).

However in so doing the Department of Justice, and then the Court of Appeals for the Fifth Circuit, did exactly what was proscribed by *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 37 U.S.L.W. 4107 (1969). "In reaching such a decision . . ." the Department of Justice "must of necessity make its own interpretation of the meaning of church doctrines." 37 U.S.L.W. at 4109. Further it could have done this "only after assessing the relative significance to the religion of [its] tenets . . . ." *Id.* In fact the Department of Justice seems to have gone to "the very core of a religion . . ." *Id.,* and found that it departed from what its conception of a religion should be. This must clearly violate the establishment clause of the first amendment.

As shown by the decision in *Founding Church of Scientology* v. *United States,* 37 U.S.L.W. 2466 (D.C. Cir. Feb. 5, 1969), these principles are no less applicable when it is the government (rather than a dissident church faction) which asserts to the fact-finding body the relevance of church doctrine.

It was noted in the Petition for Certiorari at 16, 18 that the Department of Justice's action effectively

establishes a religion in violation of the first amendment.

Respectfully submitted,

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